THE HON'BLE MS JUSTICE G. ROHINI

W.P.No.7398 of 2000

Dated: 28.09.2007

Between:

Smt Waheeda Khanam.

..Petitioner

and

The Commissioner, Adilabad Municipality, Adilabad and another.

..Respondents.

THE HON'BLE MS JUSTICE G. ROHINI

W.P.No.7398 of 2000

ORDER:

The petitioner herein is in occupation of 75 sq. yards of land situated at Bhoktapur, Adilabad, wherein she has been running a tea stall in a temporary structure. On 15.02.1991, the petitioner was served with the proceedings of the first respondent-Municipal Commissioner, informing her that it has been proposed to allot her the land in her occupation subject to payment of market value and development charges apart from construction fees and property tax as indicated therein, within 40 days. The said memo was issued in terms of G.O.Ms.No.361, dated 15.04.1989 and G.O.Ms.No.716 M.A. dated 27.12.1989, which provided for regularization of the encroachments in unobjectionable areas. Accordingly, the petitioner paid the requisite amount. However, the same was returned on 16.04.1992 on the ground that the matter regarding the issue of patta was pending with the Government. Thereafter, no further steps were taken ,however the impugned memo dated 15.03.2000 was issued by the Revenue Divisional Officer, Adilabad, rejecting the petitioner's request for issue of house site patta on the ground that in the enquiry report of

the Mandal Revenue Officer, Adilabad, it was found that the property in her occupation was not a dwelling hut, but it was a lodge being used for commercial purpose. Aggrieved by the same, the present writ petition has been filed contending *inter alia* that the allegation that the petitioner has been running a lodge is absolutely false and without any basis and it is also factually incorrect to state that the petitioner is residing at a different place.

Pursuant to Rule Nisi ordered, though the first respondent filed a counter-affidavit reiterating the allegations in the impugned order that the encroached area is being used for a commercial purpose, no counter-affidavit has been filed on behalf of the second respondent. Thus the specific plea of the petitioner that no opportunity was given to her before concluding that she was running a lodge remained unrebutted.

Since the impugned order dated 15.03.2000 also does not reflect any prior notice to the petitioner before rejecting her request for regularization, I find force in the submission of the learned counsel for the petitioner that the impugned action of the second respondent is arbitrary, illegal and violative of the principles of natural justice.

Accordingly, the impugned order dated 15.03.2000 is hereby set aside and the writ petition is disposed of with a direction to the respondents to conduct proper enquiry giving an opportunity to the petitioner to make her representation with regard to the allegation that she is using the property in question for commercial purpose

and pass appropriate orders afresh.

The Writ Petition is accordingly disposed of. No costs.

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G. ROHINI, J

Dated: 28.09.2007

sj